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7 Attorneys for Defendants  
8 HSBC MORTGAGE CORPORATION (USA) AND  
HSBC BANK USA, N.A.  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie  
Marie Shearn, individually, on behalf of all  
14 others similarly situated, and on behalf of  
the general public,

15 Plaintiffs,

16 v.

17 HSBC Mortgage Corporation (USA);  
18 HSBC Bank USA, N.A.; and DOES 1  
through 50, inclusive,

19 Defendants.  
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Case No. C 07 2446 MMC [ECF]

**DECLARATION OF MICHAEL J. COYNE  
IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR CONDITIONAL CERTIFICATION,  
PRODUCTION OF UPDATED CLASS  
LIST, AND PARTIAL SUMMARY  
JUDGMENT**

Date: February 8, 2008  
Time: 9:00 a.m.  
Courtroom: 7 (19th Floor)  
Judge: Hon. Maxine M. Chesney

Complaint Filed: June 29, 2007 (Amended)  
Trial Date: Not Yet Set

1 I, Michael J. Coyne, hereby declare and state:

2 1. I have personal knowledge of the facts set forth below. If called as a witness,  
3 I could and would testify to the following:

4 2. I am employed by HSBC Mortgage Corporation (USA) as a Vice President  
5 and Retail Mortgage Manager. I have worked for HSBC Mortgage since August 1995. The name of  
6 the Company was Marine Midland Mortgage when I started, but the name changed to HSBC  
7 Mortgage about ten (10) years ago.

8 3. I manage all the loan officers employed by HSBC Mortgage in Rockland  
9 County, Orange County and Sullivan County, in the state of New York. Currently, there are  
10 fourteen (14) loan officers and two (2) sales managers in my region in addition to me.

11 4. The sales managers, which were formerly referred to as Retail Team Leaders,  
12 directly supervise the loan officers and have significant supervisory authority. They are responsible  
13 for providing training and guidance to loan officers and are also involved in the hiring process and  
14 disciplinary decisions. Peter Malone, who I am informed has opted to become involved in this  
15 lawsuit, was formerly employed as a team leader in my region.

16 5. My employer is HSBC Mortgage Corporation (USA), which is also the  
17 employer of all the loan officers I manage. When I hire loan officers, I make it clear to them that  
18 their employer will be HSBC Mortgage Corporation (USA) and not HSBC Bank U.S.A., N.A.  
19 ("HSBC Bank"). HSBC Bank is a separate company. HSBC Mortgage Corporation (USA) is listed  
20 as the employer on my business card and on the business cards of all the loan officers that I manage.  
21 HSBC Mortgage Corporation (USA) is also listed as the employer on our W-2 forms and our  
22 paychecks come from HSBC Mortgage.

23 6. In this region, HSBC Mortgage Corporation (USA) has three (3) physical  
24 offices, although the loan officers can do their work anywhere they want. There are HSBC  
25 Mortgage offices in Nyack, New York; Tappan, New York; and Highland Falls, New York. The  
26 physical offices are spaces that HSBC Mortgage Corporation (USA) rents from HSBC Bank U.S.A.,  
27 N.A.

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1           7.     The loan officers in my region have no set work hours. They may work  
2 whenever they want. They also have no minimum or maximum hours they must work. They choose  
3 how much they work.

4           8.     In addition, the loan officers in my region can work anywhere. They choose  
5 where they want to meet with clients and potential clients. The locations of meetings can be  
6 anywhere.

7           9.     I treat my loan officers like independent contractors and tell them their job is  
8 like being self-employed. I even allow them to make their own advertisements if they want as long  
9 as they are approved by HSBC Mortgage Corporation (USA) marketing department.

10          10.    The loan officers in my region are very mobile. They all have cell phones  
11 they can use to contact clients from anywhere. However, they do not have Blackberries with email  
12 capability.

13          11.    There are seventeen (17) branches of HSBC Bank in this area. When bank  
14 customers ask about mortgages, bank employees usually refer the customer to a loan officer with  
15 HSBC Mortgage Corporation (USA).

16          12.    It is up to the regional manager how to distribute referrals that HSBC  
17 Mortgage receives from branches of HSBC Bank. My system for assigning who gets the referrals  
18 from which bank branch is to assign each loan officer one (1) or two (2) branches. I consider a bank  
19 branch assignment to be a reward to loan officers. The bank branches are an easy source of  
20 business. For this reason, I give some of the top producing loan officers more than one (1) branch. I  
21 am now hiring new loan officers. New loan officers will not even get one (1) branch as a referral  
22 source until they earn that opportunity.

23          13.    When I "assign" the bank branches, I tell loan officers that they are supposed  
24 to use the bank branch as a referral source. Loan officers are not supposed to stay at the bank  
25 branches all day waiting for customers or work from the bank branches. I tell loan officers that they  
26 should stop by the bank branch once a week and make sure the bank employees know who they are  
27 and have their business card. Loan officers are just supposed to develop a relationship with key  
28

1 bank employees, not sit in the branches all day, so that the bank employees will call the loan officer  
2 from HSBC Mortgage Corporation (USA) when a bank customer asks about mortgages.

3 14. The loan officers can travel to the bank branches to meet with clients if they  
4 want. Loan officers are paid for their mileage for traveling to the bank branches, but not when  
5 traveling from their house to the HSBC Mortgage Corporation (USA) offices.

6 15. If a loan officer is sitting at a bank branch all day waiting for customers, that  
7 loan officer is not properly doing his or her job. I do not want my loan officers to stay at the bank  
8 branches. I want them on the road, out in the field, looking for mortgage clients from many sources.  
9 I tell the loan officers that they are also supposed to be out looking for clients from sources other  
10 than HSBC Bank, such as realtors, attorneys and accountants. I also suggest that they get involved  
11 with community or trade organizations to make connections, but this is just a suggestion for getting  
12 more business and not a requirement.

13 16. The "HSBC" brand name is very well known in this area and potential  
14 customers often look up HSBC Mortgage Corporation (USA) on the Internet or in the phone book  
15 and call the number listed for HSBC Mortgage Corporation (USA) on their own, without any loan  
16 officer initiating contact. The published number, which is also listed in mailings that are sent to the  
17 public, rings through to one of our physical offices. I give my loan officers the opportunity to get  
18 business by answering the office phone for a day. The rule is that the loan officer who answers the  
19 phone gets all the business that comes in that way on that particular day, unless the person who calls  
20 asks for a particular loan officer by name. I call this phone time "up time." It is completely  
21 voluntary whether loan officers want to take advantage of this easy way to get business. Loan  
22 officers can opt-out of having any "up time" if they want. I usually assign each loan officer who  
23 wants "up time" one to two days per month when they are entitled to answer the main phone line.  
24 Loan officers in Orange County can transfer the calls that come in to their cell phones if they do not  
25 want to stay in the office. In the other offices in my region, the phone rings a lot, so it does need to  
26 be answered from the office.

27 17. Loan officers in my region also have the opportunity to attend community  
28 events, such as first time homebuyer seminars. It is not mandatory for loan officers to attend any

1 event. Loan officers are also notified about new housing developments from time to time, so they  
2 can try to make connections with the developers and become an approved mortgage provider for the  
3 housing development.

4 18. The loan officers in this region do extremely well. There have been loan  
5 officers who closed over \$50 million in loans in a single year, although that was in 2004 when the  
6 real estate market was doing really well. Most loan officers in this region make more than  
7 \$100,000.00 per year.

8 19. Premier loans are not very common in this region. In this region, HSBC  
9 Mortgage Corporation (USA) sells mostly what I call "niche products," which are loans of lower  
10 amounts that are only available to moderate or low income buyers or people who are buying a home  
11 in a certain area. The most common mortgages in this region are: (1) lower interest mortgages for  
12 low and moderate income people that are subsidized by the State of New York Mortgage Agency  
13 (SONYMA); (2) HSBC Mortgage Corporation (USA) Community Works loans offered pursuant to  
14 the federal Community Reinvestment Act, which are available to home buyers whose income is  
15 below a certain level or who are buying in a minority concentrated area; and (3) mortgages  
16 subsidized by the Federal Housing Administration (FHA) that have lower rate advantages for people  
17 who need help buying a home.

18 20. I hold monthly meetings for loan officers. I decide what topics to cover at  
19 these meetings. I choose topics that I believe will help people sell loans in this region. Loan officers  
20 also receive training on topics such as the local housing market and the features of the loans we  
21 usually sell in this area. I sometimes have guest speakers, such as realtors and attorneys, speak at the  
22 staff meetings. I have also brought in a representative from SONYMA to talk about that state  
23 agency's loan programs.

24 21. When I hire loan officers in this region, the standard length of the forgivable  
25 draw (minimum amount of pay) that the loan officers receive is six (6) months. However, I am not  
26 required to always provide six (6) months of a forgivable draw. It could be more or less, depending  
27 on various factors, such as the person's book of business, their experience, and whether they choose  
28 to negotiate for a longer forgivable draw period.

22. Along with my sales managers, I am responsible for the discipline of loan officers. My sales managers and I decide when it is time for someone to be written up because of low production. I usually provide verbal counseling on more than one occasion before issuing a written warning to a loan officer. I try to talk to loan officers about their performance and make suggestions for improvements before they fall below the minimum production expectation. There are company guidelines for when a loan officer should be terminated for low production. However, if I see that someone is trying hard, I will fight to keep that person on and will often give them another chance.

23. At least two loan officers in my region told me they have already received notice of this lawsuit from the Plaintiffs' counsel. One of them said he threw away the notice because he did not want to be involved in this lawsuit.

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing declaration is true and correct to the best of my personal knowledge.

Executed this 18th day of January, 2008, in \_\_\_\_\_, New York.

  
MICHAEL J. COYNE

DECLARATION OF MICHAEL J. COYNE

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